

MF 01-17

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

ABC PETROLEUM COMPANY

Taxpayer

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Docket No. 01-ST-0000

Acct # 00-00000

NTL # 00-000000 0

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Larry Montanye for ABC Petroleum Company.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Penalty for Motor Fuel Tax (“Notice”) to ABC Petroleum Company (“taxpayer”). The Notice was issued for failing to display a notice on the taxpayer’s invoices according to section 4e of the Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*). The taxpayer timely protested the Notice. The parties filed a Joint Stipulation of Facts and supporting statements of law and asked that this matter be decided based on their written submissions. The sole issue presented is whether the taxpayer’s invoices “accompanied” the sale of dyed diesel fuel, which would activate the notice requirement of

section 4e. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On February 15, 2000, the taxpayer sold dyed diesel fuel to XYZ Companies (“purchaser”). (Stipulation #1)

2. The taxpayer prepared shipping documents that were given to the purchaser at the place of delivery of the fuel. These documents physically accompanied the sale of the fuel and included the following printed statement: “OFF HIGHWAY USE ONLY, DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE.” (Stipulation #1)

3. On February 16, 2000, the taxpayer prepared an invoice for the sale. The invoice included the amount and the date upon which payment was due. The invoice did not include a statement regarding the nontaxable use of the dyed diesel fuel. (Stipulation #2)

4. The taxpayer prepared the invoice after the fuel was delivered to the purchaser. The invoice was prepared at a location that was remote from the fuel terminal. The invoice did not physically accompany the fuel as it was removed from the terminal. The purchaser received the invoice after the fuel was purchased and at a location remote from the fuel terminal. (Stipulation #3)

5. On November 3, 2000, the Department issued to the taxpayer a Notice of Penalty for Motor Fuel Tax, which assessed a \$500 penalty for failing to display the notice “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use,” on its invoices.

CONCLUSIONS OF LAW:

Section 4e of the Motor Fuel Tax Law provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” must appear on all shipping papers, bills of

loading, and invoices accompanying any sale of dyed diesel fuel.” (emphasis added; 35 ILCS 505/4e)

Subsection 13 of Section 15 of the Motor Fuel Tax Law provides in part as follows:

“13. Any person who sells or transports dyed diesel fuel without the notice required by Section 4e shall pay the following penalty:

First occurrence.....\$ 500

Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

The Department imposed the \$500 penalty because the invoice that the taxpayer prepared and sent to the purchaser did not include the notice as stated in section 4e.

The taxpayer contends that its invoice did not “accompany” the sale of the dyed diesel fuel, and therefore the notice under section 4e was not required. The taxpayer notes that the word “accompany” is defined in Webster’s New Twentieth Century Dictionary as “to go with or attend as a companion or associate on a journey; to be with, as connected.” The taxpayer claims that the invoice did not accompany the removal or delivery of the fuel and states that it was prepared subsequent to the delivery in an office remote from the terminal devoted to billing the purchaser. The taxpayer therefore contends that the invoice did not accompany the sale.

The taxpayer also argues that the purpose of the notice is to ensure that the carriers and receivers of the fuel know that it is dyed, and this purpose can only be accomplished at the time and place of the removal, delivery, and receipt of the fuel. The taxpayer claims that putting the notice on an invoice that is prepared a day after the delivery of the fuel does not ensure that the dyed fuel is used in a non-taxable manner.

The Department argues that the statute takes effect whenever a document is prepared in association with the sale. The Department notes that Blacks Law Dictionary, 5th Edition, defines “accompany” as “To go along with. To go with or attend as a companion or associate; to occur in association with.” The Department claims that an invoice prepared for the purpose of billing a

customer is an invoice “in association with” the sale; therefore it accompanies the sale. The Department states that the statute does not require that the invoice be issued at the time and place of delivery in order for the notice to be on it.

The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill.2d 206, 211 (1994). “Interpretation of a statute must be grounded on the nature and the object of the statute as well as the consequences which would result from construing it one way or another.” Illinois Power Co. v. Johnson, 116 Ill.App.3d 618, 626-27 (4th Dist. 1983). Taxing statutes should be construed so that they are given a reasonable and common sense meaning. Id. at 629.

A reasonable interpretation of the statute at issue would be that the term “accompanying” includes invoices prepared in association with a sale. The statute specifically refers to “all shipping papers, bills of lading, and invoices accompanying any sale of dyed diesel fuel.” (35 ILCS 505/4e) Nothing in the statute specifically limits the relevant invoices to ones issued at the delivery site. To the contrary, the only restriction is that the invoice “accompany” the sale. The invoice in question accompanied the sale because it was prepared in association with it. Even though the invoice was prepared the day after the fuel was delivered to the purchaser, there is no dispute that it relates to the sale that was made the previous day and was prepared in connection with it. It is not surprising that the invoice was delivered separately from the documents that were given to the purchaser when the fuel was picked up because generally the person responsible for paying for the fuel is not the same as the person who actually receives it. It is still reasonable to say that this invoice accompanied the sale.

This interpretation seems to be consistent with the nature and object of the statute. The purpose of the notice requirement is to ensure that the buyers of dyed fuel, in addition to the carriers and receivers of the fuel, know that it is dyed and that it is to be used only for non-taxable use. Nothing in the statute indicates that the notice was intended only for the person who physically receives the fuel.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Penalty be upheld.

Linda Olivero
Administrative Law Judge

Enter: July 18, 2001